LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 10 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 541

MARTIN AKERSON, ET AL., *Petitioners,*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

---

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITION

ROBERT F. KLEPINGER
1522 K Street, N. W.
Washington, D. C. 20005

Counsel for Amicus Curiae:

Charles L. Andrews, Jr., et al.,
Veterans of Foreign Wars,
Veterans of World War I,
Catholic War Veterans,
Air Force Association,
Army Mutual Aid Association,
Air Force Mutual Aid Association,
Legion of Valor

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 541

MARTIN AKERSON, ET AL., *Petitioners,*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

---

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITION

This brief is filed, with the consent of the Solicitor General and of counsel for the petitioners,* in support of the Petition for Writ of Certiorari on behalf of the following *amicus curiae:*

1. The twenty plaintiffs involved in the companion case in the Court of Claims, *Andrews, et al.* v. *United States,* No. 163-64. The opinion of the Court of Claims in that case is reproduced in the appendix to the Peti-

---

* The written consents to the filing of this *amicus curiae* brief have been lodged with the Clerk of this Court.

tion, p. 12a. The plaintiffs in the *Andrews* case sought the same relief and the same recomputation of retired pay as sought by the petitioners herein, and their respective interests are identical.

2. The following organizations, which include among their memberships many active and retired officers of the uniformed services having both a general and a direct concern with the issues here involved:

(a) The Veterans of Foreign Wars, with a membership approximating 1,300,000.

(b) The Veterans of World War I, with a membership totalling 228,000.

(c) The Catholic War Veterans, composed of some 100,000 members.

(d) The Air Force Association, with about 60,000 members.

(e) The Army Mutual Aid Association, which includes about 34,000 active and retired officers.

(f) The Air Force Mutual Aid Association, composed of some 31,000 members.

(g) The Legion of Valor, composed of some 1150 individuals who have been decorated for heroic service.

These various *amicus curiae* respectfully urge this Court to grant the Petition for Writ of Certiorari filed in the above-entitled case so that the decision of the Court of Claims may be fully reviewed and considered by this Court. They do so out of their great concern not only with the rights of the many thousands of retired personnel involved but with the moral and

legal obligation to determine and respect the established will of Congress.

As the Petition demonstrates, the statutory pattern is a most complex and confused one. And that complexity and confusion have seemingly been reflected in the administrative and judicial treatment of the problem to date. As a result, the rights of thousands of retired personnel to have their retirement pay computed for the five years in question in accordance with pre-existing statutory formulae have been resolved in a most confusing and unsatisfactory manner. For that reason alone, the *amicus curiae* suggest that certiorari should be granted. Whatever may be the ultimate determination of the claims here at issue, that determination should be clear, convincing and accurate. Only this Court can now render such a determination.

More importantly, if the petitioners be right in their statutory claims and analyses, there has been a most egregious breakdown in the nation's legal obligations to its retired uniformed services personnel. Those obligations, as reflected in the statutes of Congress pertinent to the years in question, are entitled to the utmost respect from administrators, executives and judges. For it is upon such respect for the duly enacted obligations that a substantial portion of the continued high morale and quality of our uniformed services personnel depends.

Yet there is no assurance from the opinion of the Court of Claims that the important problems at issue have been truly understood or that the commitments made by Congress to the uniformed services have been fully respected. That opinion leaves a gnawing uncertainty about such matters. Unreviewed by this

Court, the decision below can only breed disillusion and discontent among those concerned with problems of morale. If the retirement pay commitments that many if not all thought that Congress made for the years in question are to be swept away in a cloud of confusion and misunderstanding then a most unfortunate precedent has been established for treating other commitments in a like fashion. Proper morale cannot long withstand such unfortunate breaches of faith in honoring commitments made by Congress to those undertaking lifelong governmental careers.

The statutory issues raised by the Petition are not simple; and they are not easy of solution. But the *amicus curiae* are of the opinion that it is most important that this Court bring its great expertise to the resolution of those issues. If the decision of the Court of Claims be in fact wrong, the wrong is a most serious one. To permit the long-standing will of Congress to be overridden in such a fashion is fraught with inequity and unfairness to the countless thousands of present and future retired uniformed services personnel. And it is a wrong that, at this juncture, only this Court can right.

The legal, the statutory, the equitable and the moral considerations at stake here all combine to render most appropriate the exercise of this Court's jurisdiction to review the judgment below.

Respectfully sumbitted,

ROBERT F. KLEPINGER
1522 K Street, N.W.
Washington, D. C. 20005
Counsel for Amicus Curiae

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Discussion	5
Conclusion	12
Appendix	13

CITATIONS

Case:	
United States v. *Dickerson*, 310 U.S. 554	5
Statutes:	
Act of October 2, 1963, 77 Stat. 210	4, 12
Public Law 85–422 (Act of May 20, 1958), 72 Stat. 122 *et seq.*, amending the Career Compensation Act of 1949, as amended, 37 U.S.C. (1958 ed.) 232 *et seq*	2, 4, 5, 6, 7, 8, 9, 12, 13
Section 3(a)	2, 5, 6, 7, 13
Section 4	5
Section 4(a)	3, 4, 6, 7, 8, 11, 13
Section 4(b)	3, 4, 6, 7, 8, 11, 13
Miscellaneous:	
H.R. 11470, 85th Cong., 2d Sess	8, 11
H. Rep. No. 1538, 85th Cong., 2d Sess	10
H. Rep. No. 1701, 85th Cong., 2d Sess	11
S. Rep. No. 1472, 85th Cong., 2d Sess., 2 U.S.C., Cong. & Adm. News (1958) 2465	8
S. Rep. No. 387, 88th Cong., 1st Sess	12

234-778—66

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 541

MARTIN AKERSON, ET AL., PETITIONERS

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. App. 1a–12a) is not yet reported.

JURISDICTION

The judgment of the Court of Claims was entered on May 13, 1966. On July 30, 1966, Mr. Justice White extended the time for the filing of a petition for a writ of certiorari to September 12, 1966. The petition was filed on September 9, 1966. The jurisdiction of the Court is invoked under 28 U.S.C. 1255(1).